

App. No. 10/044,294
Amendment Dated: December 17, 2004
Reply to Office Action of September 20, 2004

REMARKS/ARGUMENTS

On November 10 & 15 of 2004, applicants' attorney conducted interviews with the Examiner. During these interviews, the Examiner indicated that the limitations of claims 42, 56 and 59 might be found allowable if the limitations of those claims are rewritten into a single independent claim. Accordingly, applicant has added new claim 61, which includes all the limitations of claims 42, 56 and 59.

Claims 1, 40-42 and 44-60 also remain in this application for further review. Claims 2-39 were previously withdrawn and claim 43 was previously canceled. Independent claims 1, and 40-42 have been amended as set forth above to take into consideration the Examiner's remarks during the interviews. Applicants believe claims 1, 40-42 and 44-62 are allowable as more fully stated below.

I. Rejection of claims 1 and 44-49 under 35 U.S.C. 112, first paragraph.

Claims 1 and 44-49 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Office Action contends that claim 1 recites the limitation of two different transmission types, and that this limitation was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 has been amended as set forth above, and accordingly, applicants believe that the aforementioned claims are allowable under 35 U.S.C. 112, first paragraph.

App. No. 10/044,294
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II. **Rejection of claims 1 and 40-42 under 35 U.S.C. 102(b).**

Claims 1 and 40-42 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,060,996 issued to Kaiser et al. ("Kaiser"). Even though applicants believe that claims 1 and 40-42 are clearly allowable over Kaiser, applicants have amended the claims as set forth above to further clarify the claims and expedite allowance.

Claim 1 has been amended to recite "a broadcast transmitter configured to transmit broadcast information by employing wide-area FM subcarrier broadcasting on a predetermined schedule." Claim 1 also recites "a localcast transmitter configured to transmit local information by employing directly modulated main channel FM signaling over a local link, wherein the local area is smaller than the wide area." Claim 1 continues by reciting "a mobile device including a receiver and a transmitter, the receiver and transmitter being configured to communicate with the broadcast transmitter, the localcast transmitter and a peer mobile device."

With regard to independent claim 40, claim 40 has been amended to recite that the device is "configured to receive transmitted data from the localcast transmitter and transmit data to the localcast transmitter." Claim 40 has also been amended to recite that the device is "further configured to receive transmitted data from a peer device and transmit data to the peer device."

Claim 41 has been amended to recite "a device configured to receive data when in a broadcast mode and to receive and transmit data when in a localcast mode or a peer-to-peer mode." Claim 41 also recites a "broadcast transmitter configured to transmit to the device over a subcarrier channel to a wide area when the device is in a broadcast mode." Claim 41 further

App. No. 10/044,294
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recites "a localcast transmitter coupled to the data source and configured to transmit to and receive data from the device over a local area and in a locally-unused FM frequency when the device is in a localcast mode...." Claim 41 continues by reciting "a peer device configured to communicate with the device over a local area and in a locally-unused FM frequency when the device is in a peer-to-peer mode."

Regarding claim 42, claim 42 recites "a device configured to receive a wireless communication transmitted in a broadcast mode." Claim 42 continues by recited that "the device being further configured to transmit and receive additional wireless communications transmitted in a localcast mode and a peer-to-peer mode, wherein the local cast mode includes data transmitted and received over a locally-unused FM channel."

The aforementioned limitations of amended claims 1 and 40-42 are not taught or otherwise suggested by Kaiser. Specifically, Kaiser does not teach the unique combination of the elements recited in claims 1 and 40-42. Any assertion otherwise would fail to consider Kaiser and the present invention as a whole. Kaiser does not teach a device that is capable of communication with a broadcast transmitter, a localcast transmitter and a peer device. Furthermore, Kaiser fails to teach a device that includes a broadcast mode, a localcast mode and a peer-to-peer mode. Kaiser also fails to teach a device that uses locally-unused FM frequency when communicating in a localcast mode and a peer-to-peer mode. Accordingly, applicants assert that the claims, as amended, clearly distinguish Kaiser and therefore, are not anticipated by the same.

App. No. 10/044,294
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III. Rejection of Claims 44-60 under 35 U.S.C. 103(a).

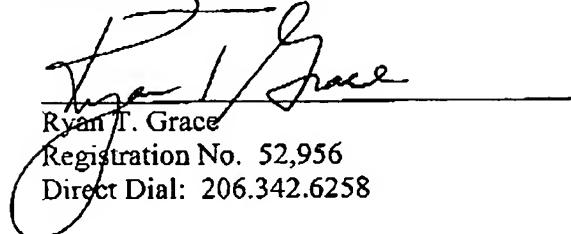
Claims 44-60 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kaiser in view of U.S. Patent No. 5,757,782 ("Gaskill"). Applicants respectfully disagree with the rejection. There is no suggestion in either of the references that they may be modified in the manner suggested. Furthermore, even if for argument purposes such modifications were possible, the proposed combination would still fail to teach several of the limitations of the claims. Also, the 35 U.S.C. 103(a) rejection depends from the 35 U.S.C. 102(b) rejection above. Claims 1 and 40-42 are clearly allowable under 35 U.S.C. 102(b) as more fully set forth above. Accordingly, applicants believe that the 35 U.S.C. 103(a) rejection should be withdrawn for at least the same reasons set forth above.

In view of the foregoing, all pending claims are believed to be allowable and the application is in condition for allowance. Therefore, a Notice of Allowance is respectfully requested. Should the Examiner have any further issues regarding this application, the Examiner is requested to contact the undersigned attorney for the applicant at the telephone number provided below.

App. No. 10/044,294
Amendment Dated: December 17, 2004
Reply to Office Action of September 20, 2004

Respectfully submitted,

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